

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOSEPH LAWRENCE CURRY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-175-JJF
)	
GREGORY HOPKINS,)	
)	
Defendant.)	

**PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL, OR IN THE
ALTERNATIVE, FOR A FINDING OF CONTEMPT**

Plaintiff Joseph Lawrence Curry ("the Plaintiff") moves, pursuant to Federal Rule of Civil Procedure 45(e), for an Order compelling the production of documents from the Dover Police Department. In addition to the grounds provided in its Motion and opening brief in support thereof, the Plaintiff states the following in support:

Factual Background

1. On June 16, 2008, the Plaintiff filed a Motion with this Court seeking an Order for the production of documents from the Dover Police Department, and the production of documents from and deposition of Officers Jeffrey Gott and Ralph Taylor (D.I. 158). That motion was unopposed. This reply details facts occurring since the filing of the original motion.
2. Counsel for the Defendant represents the Dover Police Department and Officers Gott and Taylor in connection with this matter.
3. In order to solve their dispute without judicial intervention, the parties reached an agreement (the "Agreement") to stipulate to the extension of the time period for

fact discovery and a response to the Plaintiff's motion so that the discovery sought by the Plaintiff would be produced (Ex. I).

4. The parties jointly moved the court for an extension of fact discovery, and the Court granted the joint stipulation in its order of July 1, 2008 (the "Order") (D.I. 163). That stipulation set the deadline for completion of discovery as August 15, 2008, and noted that if all outstanding discovery was produced by that date the Plaintiff would withdraw this motion. That stipulation also ordered that if the outstanding discovery was not produced, the response to this motion would be due on August 18, 2008, and the Plaintiff's reply would be due on August 25, 2008.
5. Pursuant to the Agreement, the Plaintiff took the depositions of Officers Gott and Taylor, and the Dover Police Department has produced responses to certain of the Plaintiff's requests for production.
6. However, the Dover Police Department has still not produced other, critical documents responsive to the subpoena served by the Plaintiff. The Dover Police Department did not object to any document request.
7. In the Agreement, the Defendant's Internal Affairs and personnel files were to be produced by July 7, 2008 (Ex. I). Those documents have yet to be produced, and thus, under the Order (D.I. 163), a response to the Plaintiff's motion was due on August 18, 2008. No response was filed.
8. Without these documents, a comprehensive deposition of the Defendant cannot occur.

9. The Plaintiff has asked three times after the deadline, in writing, for these documents to be produced (Ex. J). The Plaintiff has not received a response to any of these letters.
10. In addition, the Plaintiff served a second subpoena on the Dover Police Department on August 4, 2008 (Ex. K). That subpoena called for the production of documents relating to video recording equipment, and for a deposition on August 15, 2008. There has been no response to this subpoena. No documents have been produced pursuant to this subpoena, and no deposition has occurred.

Conclusion

11. The Dover Police Department has not provided any reason for its failure to comply with the subpoenas.
12. As such, the Dover Police Department waives all right to object to the subpoenas.
13. A Response to the Plaintiff's Motion was due on August 18, 2008. None was filed, which leaves the Plaintiff's Motion unopposed.

Date: August 25, 2008	Respectfully submitted, CONNOLLY BOVE LODGE & HUTZ LLP <u>/s/ Brian R. Lemon</u> Brian R. Lemon (#4730) Scott E. Swenson (#4766) The Nemours Building 1007 North Orange Street P.O. Box 2207 Wilmington, Delaware 19899-2207 Telephone: 302-888-6319 Facsimile: 302-658-5614 <u>blemon@cblh.com</u> <u>sswenson@cblh.com</u>
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**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL, OR IN THE
ALTERNATIVE, FOR A FINDING OF CONTEMPT**

WHEREAS, Plaintiff's Motion is granted.

IT IS SO ORDERED, this ____ day of _____, 2008, that the Dover Police Department shall produce all outstanding documents responsive to the Plaintiff's subpoenas that are in its possession, custody or control within 10 days of the date of this Order.

United States District Judge

CERTIFICATE OF SERVICE

I, Brian R. Lemon, Esq., hereby certify that on August 25, 2008, a copy of the PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL, OR IN THE ALTERNATIVE, FOR A FINDING OF CONTEMPT and accompanying exhibits were caused to be served upon the following:

BY U.S. MAIL AND FACSIMILE

Daniel Griffith, Esquire
Whiteford Taylor & Preston
1220 N. Market Street
Suite 608
Wilmington, DE 19801

/s/Brian R. Lemon
Brian R. Lemon (# 4730)